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No. 1078

In the

Supreme Court of the United States

OCTOBER TERM, A. D. 1965.

KONSTANTINOS ROUMELIOTIS and
PANAGIOTA ROUMELIOTIS,

Petitioners,

vs.

J. M. LEHMANN, District Director of Immigration and Naturalization,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Konstantinos Roumeliotis and Panagiota Roumeliotis, Petitioners, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled cause on January 6, 1966.

OPINION BELOW.

The opinion of the Court of Appeals is printed in the Appendix to this petition as Appendix A.

JURISDICTION.

Jurisdiction of this court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTION PRESENTED.

Does the Immigration and Naturalization Service have the right to discriminate against Petitioners who are seeking to allow their child, a citizen of the United States, to have medical services in the United States?

STATEMENT.

Petitioners brought this action in the United States Court of Appeals to the Seventh Circuit pursuant to 8 United States Code, Section 1105a (1961 Supp.), of an order of deportation issued against them on June 25, 1965.

The Petitioners are natives of Greece and were admitted to the United States as visitors, prior to the order being entered.

After their admission, on July 8, 1962, a child named Chris Roumeliotis, who lives with them currently, was born to them in the City of Chicago, Illinois.

That the child was born with a congenital birth defect and that the parents have requested a stay of deportation order, to allow them to have the congenital birth defect of their son, a citizen of the United States, treated by an American doctor.

That the Immigration Service contends that this can be done as well in Greece as in the United States, and for that reason have ordered the deportation.

REASONS FOR GRANTING WRIT.

The Roumeliotis child is a citizen of the United States and as such should be allowed to have medical treatment rendered to him in the United States, but by reason of his few years, he is unable to stay in the United States and, therefore, is in effect, being deprived of his right as an American citizen because of the action of the Immigration and Naturalization Service against his parents.

That the Roumeliotis' have no means or manner of allowing Chris to remain in the United States for the course of treatment expected, and that the District Director of Immigration and Naturalization has sent Chris to a United States public health doctor, for comment on his condition, but that the doctor was not a doctor specializing in pediatrics, and that pediatric specialists are only available to the parents in the City of Chicago, and because of the means and state of the parents, would not be available to them in Greece.

While granting this was a discretionary matter "*Kladis* v. *Immigration & Naturalization Service,* 343 F.2d 513 (7th Cir. 1965)", this matter is, in reality, an abuse because of the hardship it creates for an American citizen.

For this reason, and this reason only, the Petitioners herein have been unreasonably treated in their request for a stay of deportation until their son can be treated for the congenital birth defect previously stated. That the condition can be treated in Greece is not argued, but it is our opinion that the best treatment is available in Chicago, and that the requests are not unreasonable, but that the Immigration Service's denials are unreasonable.

CONCLUSION.

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 15207 SEPTEMBER TERM, 1965 JANUARY SESSION, 1966

KONSTANTINOS ROUMELIOTIS and PANAGIOTA ROUMELIOTIS, *Petitioners,*

v.

IMMIGRATION AND NATURALIZATION SERVICE, *Respondent.*

Petition for Review of an Order of the Immigration and Naturalization Service under Public Law 87-301.

JANUARY 6, 1966

Before HASTINGS, *Chief Judge,* SWYGERT, and MAJOR, *Circuit Judges.*

PER CURIAM.

Petitioners are natives and citizens of Greece who were admitted to the United States in 1964 as nonimmigrant visitors for pleasure. They were authorized to remain here until February 10, 1965. They did not depart before or on that date. At a subsequent hearing, after a show cause order had been issued by the Immigration and Naturalization Service, petitioners admitted that they were subject to deportation, but said that they wished to remain in the United States until their small child could be treated for a congenital illness. The Public Health Service, after examining the child, found that the

ailment would not interfere with the child's ability to travel and that appropriate medical procedures for treatment and correction were available in Greece. After several stays, petitioners were finally ordered to depart before or on June 24, 1965. Petitioners then filed the present petition for review under section 106(a) of the Immigration and Nationality Act, 8 U.S.C. § 1105a(a).

The petition is denied. Having expressly waived their right to appeal the order of deportation to the Board of Immigration Appeals, petitioners failed to exhaust their administrative remedies provided by section 106(c) of the Immigration and Nationality Act, 8 U.S.C. § 1105a(c). Accordingly, the order of deportation is not reviewable. Furthermore, the district director of the Immigration Service did not abuse his discretion in refusing a further stay of the deportation order. *Kladis* v. *Immigration & Naturalization Service,* 343 F.2d 513 (7th Cir. 1965).

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1078

KONSTANTINOS ROUMELIOTIS and
PANAGIOTA ROUMELIOTIS, PETITIONERS

v.

J. M. LEHMANN, DISTRICT DIRECTOR OF
IMMIGRATION AND NATURALIZATION

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioners entered the United States in 1960 as temporary visitors and were deported in 1963. See 304 F. 2d 453, certiorari denied, 371 U.S. 921. Their youngest child was born in the United States in 1962.

In July 1964, petitioners, with their youngest son, entered the United States from Canada as temporary visitors for pleasure. They were permitted to remain until February 10, 1965, but did not depart (R.

5). On April 19, 1965, after a hearing at which petitioners did not contest deportability (R. 2-10), they were ordered deported unless they voluntarily departed when ordered to do so (R. 16). The time for voluntary departure, first fixed at May 20, 1965, was extended to June 24, 1965 (R. 17, 25, 32, 35).

In late May 1965, petitioners presented to the Immigration Service a letter from a private physician who stated that the son (who had been born in the United States in 1962) had been born with a right side cryptorchidism. They requested an extension of time in which to depart so that the condition could be watched (R. 20, 21, 24-31). The child was examined on May 25, 1965, by a public health physician who reported that the child did have the condition described, but that the condition would not in any way interfere with the child's ability to travel from Chicago to Greece, and that there were no special procedures or medicine necessary that would not be available in Greece or other European countries (R. 23).

When the Immigration and Naturalization Service declined to extend the time for voluntary departure, petitioners sought a stay by a petition for review in the Court of Appeals for the Seventh Circuit. The court held that no abuse of discretion had been shown (Pet. 1a-2a). Petitioners seek a review of that order.

The facts set forth above amply demonstrate that there has been no abuse of discretion in denying petitioner's application for a stay of deportation.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
Solicitor General.

MARCH 1966.

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